

## Agricultural Marketing Service, USDA

## § 1200.9

provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

### § 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

### § 1200.7 Judge.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

- (1) Rule upon motions and requests;
- (2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Examine and cross-examine witnesses and receive evidence;
- (5) Admit or exclude evidence;
- (6) Hear oral argument on facts or law; and
- (7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise or-

dered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

### § 1200.8 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in §1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to §1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

### § 1200.9 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in §1200.5 (relating to the giving of notice of the hearing): Except that if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances—(1) Right to appear.* At the hearing, any interested person